

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

WHOLE WOMAN’S HEALTH, *et al.*,

*Plaintiffs,*

v.

AUSTIN REEVE JACKSON, in his official capacity as  
Judge of the 114th District Court, and on behalf of a  
class of all Texas judges similarly situated, *et al.*,

*Defendants.*

Civil Action No.: 1:21-cv-00616-RP

**PLAINTIFFS’ MOTION TO DISMISS REMAINING CLAIMS WITHOUT PREJUDICE**

On June 24, 2022, this Court dismissed Claims 1 through 5 of the complaint against all Defendants. The Court also dismissed all claims against Defendants Jackson, Clarkston, Paxton, and Dickson and expressly retained jurisdiction over any subsequent claims for fees and/or costs incurred in this litigation.

The only claims remaining in this case are Claims 6 and 7 against the state-licensing-official defendants. With respect to those remaining defendants, Claims 6 and 7 assert that any claims for fees and/or costs that they may assert under Tex. Civ. Prac. & Rem. Code Ann. § 30.022 are preempted and unconstitutional. Complaint, ECF No. 1, ¶¶ 155–63.

Plaintiffs are willing to dismiss Claims 6 and 7 without prejudice to their ability to assert preemption, unconstitutionality, and any other defenses in response to any subsequent claims that the remaining defendants may assert under Tex. Civ. Prac. & Rem. Code Ann. § 30.022. Plaintiffs request that the Court also expressly retain jurisdiction over any subsequent claims for fees and/or

costs incurred in this litigation, just as the Court did when it previously dismissed all claims against Defendants Jackson, Clarkston, Paxton, and Dickson. “It is well established that a federal court may consider collateral issues after an action is no longer pending,” including “the imposition of costs [and] attorney’s fees.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395–96 (1990). Indeed, “even ‘years after the entry of a judgment on the merits’ a federal court could consider an award of counsel fees.” *Id.* (quoting *White v. N.H. Dept. of Employment Sec.*, 455 U.S. 445, 451, n.13 (1982)); *see also Coward v. AC & S, Inc.*, 91 F. App’x 919, 921–22 (5th Cir. 2004) (unpublished, per curiam) (“[A] court which is divested of jurisdiction over the merits of a matter does not lose jurisdiction on any collateral issues of that matter, such as the awarding of attorney fees.”); *Procter & Gamble Co. v. Amway Corp.*, 280 F.3d 519, 524–25 (5th Cir. 2002) (describing motions for sanctions and attorneys’ fees as collateral to the merits (footnote references omitted)); *Bank of N.Y. Mellon v. Grewal*, No. 3:19-CV-01095-M (BT), 2019 WL 3033537, at \*1 (N.D. Tex. July 11, 2019) (remanding due to lack of subject-matter jurisdiction and expressly retaining jurisdiction over attorney’s fees); *Hospitality House, Inc. v. Gilbert*, 298 F.3d 424, 430 (5th Cir. 2002) (explaining that district court can expressly retain jurisdiction to enforce a settlement agreement by including in the order of dismissal a separate provision expressly retaining such jurisdiction).

## CONCLUSION

Plaintiffs request that the Court dismiss all remaining claims against the remaining defendants (Claims 6 and 7) without prejudice and that the Court expressly retain jurisdiction over any subsequent claims for fees and/or costs incurred in this litigation.

Dated: June 15, 2023

Respectfully submitted,

/s/ Marc Hearron

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**CERTIFICATE OF SERVICE**

I certify that on this 15th day of June 2023, I electronically filed a copy of the above document with the Clerk of the Court using the CM/ECF system.

/s/ Marc Hearron  
Marc Hearron